

STATE V. ESPINOZA

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
MATTHEW LEE ESPINOZA,
Defendant-Appellee.**

No. 34,923

COURT OF APPEALS OF NEW MEXICO

June 23, 2016

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alisa Ann
Hadfield, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, Steven H. Johnston, Assistant
Attorney General, Albuquerque, NM, for Appellant

Bennet J. Baur, Chief Public Defender, Santa Fe, NM, Sergio J. Viscoli, Assistant
Appellate Defender, Albuquerque, NM, for Appellee

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
STEPHEN G. FRENCH, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} The State appeals from the district court's order dismissing the charges against Defendant Matthew Lee Espinoza without prejudice. This Court issued a first calendar

notice proposing summary dismissal for lack of a final, appealable order. The State filed a timely first memorandum in opposition to this Court's notice of proposed disposition. Following this Court's decision in *State v. Angulo*, No. 34,714, mem. op. ¶ 1 (N.M. Ct. App. Jan. 5, 2016) (non-precedential), concluding that the State is entitled to an immediate right of appeal from the district court's order dismissing the case without prejudice, we issued a second notice addressing the merits of the appeal and proposing to affirm. In response, the State filed a timely second memorandum in opposition (MIO), which we have duly considered. Unpersuaded, we affirm.

{2} In its MIO, the State concedes that it failed to disclose the CAD record as required by the deadlines imposed by Second Judicial District Court Local Rule 2-400 NMRA. [2 MIO 3] However, the State argues that it was not required to disclose the CAD record because there was no showing of materiality to the defense. [2 MIO 3-6] In this Court's second notice, we rejected the State's contention that because it had no intention of calling the field investigator as a witness at trial, it did not need disclose the CAD record, [DS 5-6] by pointing out that Rule 5-501(A)(3) NMRA requires disclosure of evidence "which [is] within the possession, custody or control of the state, and which [is] material to the preparation of the defense or [is] intended for use by the state as evidence at the trial[.]" [2 CN 5] However, we also point out that LR 2-400(D)(1) NMRA does not contain any language limiting the State's duty to provide copies of documentary evidence based on a lack of materiality to the defense. As our second notice observed, pursuant to LR 2-400(D)(1), the State is required to make all initial disclosures "described in Rule 5-501(A)(1)-(6) at the arraignment or within five (5) days of when a written waiver of arraignment is filed[.]" [2 CN 4] In addition to those disclosures, however, the State is also required to provide, at the same time, "copies of documentary evidence, and audio, video, and audio-video recordings made by law enforcement officers or otherwise in possession of the state[.]" [2 CN 4-5 (quoting LR 2-400(D)(1))] The Rule provides that evidence in the possession of a law enforcement agency or other government agency is "deemed to be in possession of the state for purposes of this [R]ule." LR 2-400(D)(4). Therefore, we conclude that the plain language of LR 2-400 is broader than that of Rule 5-501(A)(3), requiring the State to provide to the defense copies of documentary evidence irrespective of a showing of materiality.

{3} For the foregoing reasons, we affirm.

{4} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

STEPHEN G. FRENCH, Judge